

No. 14780

United States
Court of Appeals
for the Ninth Circuit

WESLEY LAWRENCE UFFELMAN,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern
District of California, Southern Division

FILED

OCT 20 1955

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Los Angeles 12, California,

Attorney for Defendant and Appellant.

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Attorneys for Plaintiff and Appellee.

In the United States District Court for the North-
ern District of California, Southern Division

Criminal No. 34390

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WESLEY LAWRENCE UFFELMAN,

Defendant.

INDICTMENT

(Violation: Section 12 (a), Universal Military
Training and Service Act, 50 U.S.C. App.
462(a)).

The Grand Jury charges: That Wesley Lawrence Uffelman, defendant herein, being a male citizen, of the age of 24 years, residing in the United States and under the duty to present himself for and submit to registration under the provisions of Public Law 759 of the 80th Congress, approved June 24, 1948, known as the "Selective Service Act of 1948", as amended by Public Law 51 of the 82nd Congress, approved June 19, 1951, known as the "Universal Military Training and Service Act", hereinafter called "said Act", and thereafter to comply with the rules and regulations of said Act, and having, in pursuance of said Act and the rules and regulations made pursuant thereto, become a registrant of Local Board No. 23 of the Selective Service System in the City of Sacramento, County of Sacramento, State of California, which said Local Board No. 23

was duly created, appointed and acting for the area of which the said defendant is a registrant, did, on or about the 27th day of April, 1954, in the City of Sacramento, County of Sacramento, State and Northern District of California, knowingly fail to perform such duty, in that he, the said defendant, having theretofore been duly classified in Class 1-O, did then and there knowingly refuse and fail to comply with the order of his said Local Board No. 23 to then and there report to said Local Board on the 27th day of April, 1954, in the City of Sacramento, County of Sacramento, State and Northern District of California, for the purpose of receiving instructions to proceed to the place of employment designated by said Local Board No. 23 for the performance of civilian work contributing to the maintenance of the national health, safety and interest, to-wit, institutional work, Los Angeles County Department of Charities, Los Angeles, California, as provided in the said Act and the rules and regulations made pursuant thereto.

A True Bill.

/s/ JOHN L. FARLEY, JR.

/s/ LLOYD H. BURKE,

United States Attorney

Approved as to Form:

/s/ S. B. C.

[Endorsed]: Presented in Open Court and Ordered Filed January 19, 1955.

[Title of District Court and Cause.]

MINUTE ORDER

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Monday, the 14th day of February, in the year of our Lord one thousand nine hundred and fifty-five.

President: The Honorable Michael J. Roche, District Judge.

This case came on regularly this day for arraignment. Donald B. Constine, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendant was present in proper person. J. B. Tietz, Esq., attorney for defendant was not present this day. Defendant advised the Court that he proceeds in his own behalf until matter of trial.

Defendant was duly arraigned upon the indictment filed herein against him, stated his true name to be as charged. The substance of the charge was stated to defendant and defendant stated that he understood the charge against him. Copy of indictment was handed to defendant.

Defendant was called to plead and thereupon said defendant entered a plea of "Not Guilty" to the indictment filed herein against him, which said plea was ordered entered.

With approval of Court and consent of government, defendant waived trial by jury in writing.

Ordered case continued to March 10, 1955 for trial (Court).

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL

In conformity with Rule 23 of the Rules of Criminal Procedure for the District Courts of the United States, effective March 21, 1946, we, the undersigned, do hereby waive trial by jury and request that the above entitled cause be tried before the Court sitting without a jury.

Dated: San Francisco, California, February 14, 1955.

/s/ WESLEY L. UFFELMAN,
Defendant

/s/ DONALD B. CONSTINE,
Asst. United States Attorney

Approved:

/s/ MICHAEL J. ROCHE,
Judge, United States District Court, Northern District of California.

[Endorsed]: Filed February 14, 1955.

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL

In conformity with Rule 23 of the Rules of Criminal Procedure for the District Courts of the United

States, effective March 21, 1946, we, the undersigned, do hereby waive trial by jury and request that the above entitled cause be tried before the Court sitting without a jury.

Dated: San Francisco, California, 3/10, 1955.

/s/ WESLEY L. UFFELMAN,

Defendant

/s/ J. B. TIETZ,

Attorney for Defendant

/s/ R. H. FOSTER,

Asst. United States Attorney

Approved:

/s/ MICHAEL J. ROCHE,

Judge, United States District Court, Northern District of California.

[Endorsed]: Filed March 10, 1955.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL

May It Please the Court:

Now comes the defendant and moves the Court for a judgment of acquittal for each and every one of the following reasons:

1. There is no evidence to show that the defendant is guilty as charged in the indictment.
2. The Government has wholly failed to prove

a violation of the Act and Regulations by the defendant as charged in the indictment.

3. The denial of the ministerial classification is illegal, arbitrary and capricious because the draft boards employed artificial standards in determining what constitutes a minister of religion within the meaning of the Act and Regulations; and they did not follow the definition of the term used in the Act and Regulations in determining the claim of the defendant as a minister of religion.

4. The denial of the ministerial classification by the draft boards was arbitrary and capricious in that they held that the performance of secular work by the defendant, alone, without determining whether it was his avocation and used his performance of secular work to defeat illegally his ministerial status because the undisputed evidence showed that he is not engaged in secular work as a main business but only incidentally to his main work of the ministry, and that, according to the Act and Regulations, he is regularly and customarily engaged in teaching and preaching the doctrines and principles of a recognized church and pursues such preaching work as his vocation and does not preach incidentally to the performance of any secular work; and, therefore, the draft board order is illegal, contrary to law and without basis in fact.

5. The denial of the claim for exemption as a minister of religion by all of the draft boards, and each of them, is without basis in fact, arbitrary, capricious and contrary to law.

6. The order of the local board for defendant to perform civilian work at L. A. Dept. of Charities and Sections 1660.1 and 1660.20 of the Selective Service Regulations are in conflict with the Act, because the work is not national or federal work as required by the Universal Military Training and Service Act.

7. The act, as construed and applied by the Regulations and the order, calls for a private nonfederal labor draft for the performance of services that are not exceptional or related to the National Defense, in violation of the Thirteenth Amendment to the United States Constitution.

8. The Act, as construed and applied by the Regulation and order, is unconstitutional because it deprives the defendant of due process of law contrary to the Fifth Amendment to the Constitution.

9. Section 462 (a) of the Act, Part 1660 of the Regulation, insofar as they have been construed and applied to the defendant are an unreasonable abridgment of his right of property, contrary to the Fifth and Fourteenth Amendments to the United States Constitution.

10. Sections 1660.20 (d) and 1660.30 of Part 1660 of the Regulations are contrary to the First, Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution.

11. Defendant was denied procedural due process in that the local board failed to have available an Advisor to Registrants and to have posted con-

ney. Ordered that the motion for judgment of acquittal be, and the same is hereby, Denied. The Court Adjudged defendant Guilty of the offense charged in the indictment. Ordered that defendant be confined in an institution to be designated by the U. S. Attorney General for a period of One (1) Year and One (1) Day. Ordered that the bond on this indictment be exonerated. Ordered that defendant be granted a ten (10) day stay of execution of judgment. Ordered that judgment be entered herein accordingly.

Ordered that the motion for bond pending appeal be granted and bond set at One Thousand Dollars (\$1000).

In the United States District Court for the Northern District of California, Southern Division

No. 34390

UNITED STATES OF AMERICA

vs.

WESLEY LAWRENCE UFFELMAN

JUDGMENT AND COMMITMENT

On this 15th day of April, 1955, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of violating Section 12(a), Universal Military Training and Service Act, 50 U.S.C. App. 462(a)—Failure to Report to Local

Board — (Defendant Wesley Lawrence Uffelman did, on or about April 27, 1954, at Sacramento, California, knowingly refuse and fail to comply with order of his Local Board to report for purpose of receiving instructions to proceed to place of employment (institutional work) designated by said Local Board for performance of civilian work contributing to maintenance of national health, safety and interest), as charged in the indictment (single count); and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year and One (1) Day.

It Is Adjudged that the defendant be granted a ten (10) day stay of execution of judgment.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ OLIVER J. CARTER,

United States District Judge

Examined by:

/s/ DONALD B. CONSTINE,

Assistant U. S. Attorney

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

[Endorsed]: Judgment and Commitment Filed this 20th day of April, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appellant, Wesley Lawrence Uffelman, resides at 2994 - 19th Avenue, Sacramento 20, California. Appellant's Attorney, J. B. Tietz, maintains his office at 534 Douglas Building, 257 South Spring Street, Los Angeles 12, California.

The offense was failing to proceed to a place of employment designated by his local board, contrary to U. M. T. & S. Act, Title 50 App., Sec. 462 (a).

On April 15, 1955 after a verdict of Guilty the Court sentenced the appellant to confinement in an institution to be selected by the Attorney General for one year and one day.

I, J. B. Tietz, appellant's attorney being authorized by him to perfect an appeal do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment.

/s/ J. B. TIETZ,

Attorney for Appellant

[Endorsed]: Filed April 15, 1955.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

The following are hereby designated as the record which is material to the proper consideration of the Appeal filed by Wesley Lawrence Uffelman, in the above entitled cause:

1. Indictment.
2. Reporter's Transcript (as requested of Reporter).
3. All Exhibits in evidence as proffered are to be transmitted to the Court of Appeals.
4. Notice of Appeal.
5. Designation of Record.
6. All Stipulations.
7. All written motions.

/s/ J. B. TIETZ,

Attorney for Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 7, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents, and exhibits, listed below, are the originals filed in this court, or true and cor-

rect copies of orders entered on the minutes of this court, in the above-entitled case, and that they constitute the record on appeal herein as designated by the attorney for the appellant:

Indictment.

Minutes of arraignment and plea on Feb. 14, 1955.

Waiver of Jury trial signed Feb. 14, 1955.

Waiver of Jury trial signed Mar. 10, 1955.

Motion for judgment of acquittal.

Minutes of judgment on April 15, 1955.

Judgment and commitment.

Notice of appeal.

Designation of record.

Plaintiff's Exhibit No. 1.

Defendant's Exhibit A.

One volume of Reporter's Transcript of March 11, 1955.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 27th day of May, 1955.

[Seal]

C. W. CALBREATH,
Clerk

/s/ By WM. C. ROBB,
Deputy

In the United States District Court for the Northern District of California, Southern Division

No. 34390

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WESLEY LAWRENCE UFFELMAN,

Defendant.

REPORTER'S TRANSCRIPT

Friday, March 11, 1955

Before: Hon. Oliver J. Carter, Judge.

Appearances: For the Government: Lloyd H. Burke, U. S. Attorney, by Richard H. Foster, Assistant U. S. Attorney. For the Defendant: J. B. Tietz. [1*]

The Clerk: United States vs. Uffelman, on trial.

Mr. Foster: Ready for the United States.

Mr. Tietz: Ready for the defendant.

(Opening statement on behalf of the Government.)

The Court: Proceed, Mr. Foster.

Mr. Foster: I understand that counsel will stipulate to the introduction of the Selective Service file in this case.

The Court: Is that correct, Mr. Tietz.

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

after being ordered to report, he did not report to the office of the local board for instructions.

The Court: That was the day he was supposed to appear?

Mr. Foster: That was the day he was supposed to appear.

Now it is my understanding that counsel will stipulate that on April 27, 1954, although ordered to report for instructions, the defendant did not report.

Mr. Tietz: So stipulated.

Mr. Foster: That will conclude the Government's case. [5]

Mr. Tietz: The defense has a motion for a judgment of acquittal but thinks it more advisable to reserve the argument on it until the end of the case and then an argument on all the evidence and on the merits that could be made at one time. If the Court is agreeable to that, the defendant will then call the clerk of the Board as the first witness.

LILLIAN Z. SEARLE

called as a witness on behalf of the defendant, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: State your full name for the record.

A. Lillian Z. Searle.

Direct Examination

Mr. Tietz: Q. May I ask if it is Miss Searle or Mrs. Searle? A. Mrs.

(Testimony of Lillian Z. Searle.)

Q. Mrs. Searle, you were the clerk of the Board—what number? A. 23.

Q. For how long, approximately?

A. Well, from about January of '52.

Q. How many different advisors to registrants did you have during that period?

A. Well, the clerk acts as—— [6]

Q. Now, you are familiar with the regulations to some degree, are you not? A. Yes, I am.

Mr. Foster: Well, if Your Honor please, I think the witness has a right to answer the question.

The Court: Yes. That is, I think that you are entitled to get the information you desire, Mr. Tietz, but if she has some explanation to make of her answer, then she can do so.

So I suggest that you answer the question. Now the question is, were there any advisors appointed by the Board during this period of time?

A. Well, the Board members always act as advisors. The coordinator acts as an advisor. And there is an appeal agent that acts as an advisor, and——

Mr. Tietz: Q. There are many roving colonels that come visiting you and many people from state headquarters, and all the people in state headquarters in Sacramento and the assistant United States attorneys; in fact, there are many people who, if asked, would be happy to give a few minutes' time to a young registrant; correct?

A. I suppose so.

Q. Part of your work is to have a degree of

(Testimony of Lillian Z. Searle.)

familiarity with the Selective Service regulations, is that correct? A. Correct.

Q. That in a way is the bible that you operate by, right? [7] A. Right.

Q. And Section 1604.41 specifies that a certain official known as "Advisor to Registrants" is to be appointed, right? A. Right.

Q. Do you have any?

A. Well, the appeal agent——

Q. Please. We know you have lots of functionaries.

Mr. Foster: If Your Honor please——

The Court: Don't argue with the witness, Mr. Tietz. Has anybody been appointed, as far as you know, to fill the position of "Advisor to Registrants" specifically?

A. Well, all the board members act as advisors because they will see them at any time.

The Court: Well, you have already said that. But the only question I want to know, has any particular person been appointed with the title or with the category "Advisor to Registrants" so far as you know?

A. Not outside of what I mentioned.

The Court: In other words, your answer is that these other persons, that is, the board members and the appeal agent, act in that capacity, is that correct? A. Yes.

The Court: But no specific person otherwise has been appointed? A. That's right. [8]

(Testimony of Lillian Z. Searle.)

The Court: All right. Now then, do you have any further questions?

Mr. Tietz: Yes, sir.

Q. At any time have you or your Board or anybody on behalf of your Board ever posted in the office of the local board a notice giving the names and addresses of advisors to registrants or that anyone would substitute in their place and that free advice could be obtained from them, giving the names and addresses of such persons?

A. Well, I give that when the boys ask.

The Court: But he wanted to know, has a notice ever been posted?

A. No.

Mr. Tietz: That's all.

Cross Examination

Mr. Foster: Q. As a matter of fact, on your desk you have the names of certain people, don't you?

A. Yes, I do, the Board members and the appeal agents' names and address and phone number.

Q. Where is your desk?

A. Well, it's about two desks behind the counter. You can see it as you come in.

Q. You can see it as you come in?

A. Yes.

Q. And this list of names that you refer to is on top of your [9] desk, isn't it?

A. Yes, it is.

Q. And whose names are on that desk?

(Testimony of Lillian Z. Searle.)

A. The list of the Board members and the appeal agent.

Q. Do you know the defendant, Mr. Uffelman?

A. Yes, I do.

Q. For how long a period of time have you known him?

A. Ever since I have been on the Board.

Q. Are you familiar with his Selective Service file? A. Yes, I am.

Q. Do you recall any case where the regulations allowed it, that the defendant did not request and obtained a personal appearance?

Mr. Tietz: I object. We are only concerned with this case.

The Court: I will overrule the objection. For whatever the testimony is worth, I will hear it.

A. No, he has never been refused any personal appearance.

Mr. Foster: Q. That is, has there been any case in which he has asked one and hasn't received one?

A. No.

Q. Now, when he has been retained in a classification by a personal appearance, is there any case that you know of that he has not taken the appeal?

A. No. [10]

Q. Now, has he ever submitted material to you for inclusion in his file? A. Yes, he has.

Q. You say that was on few or many occasions?

A. Many occasions.

Q. Has anyone ever refused him the opportunity to submit this material? A. No.

(Testimony of Lillian Z. Searle.)

Q. Now, has he ever asked you questions as to his rights under the Selective Service Act?

A. Well, I am sure he has.

Q. You don't remember specifically at any time?

A. No.

Mr. Foster: No further questions.

Mr. Tietz: I would like to ask a few questions in connection with what Mr. Foster was asking.

Redirect Examination

Mr. Tietz: Q. Is it not a fact that on December 8, 1953 this defendant had what is called an appearance before local board with your local board? Would you like to look at the record to make certain? A. Yes, I would.

The Court: Would you hand her the records so she can look at them, Mr. Tietz?

(Witness examining.) [11]

A. Yes, on December the 8th, 1953 he did have a personal appearance.

Mr. Tietz: Q. Didn't he come to that personal appearance with two friends who knew him for a considerable length of time, a Mr. Brese, who had been a minister for 40 years and 30 years a resident of Sacramento, and a Mr. Hendrickson, of 20 years, and wanted them to testify for him at that meeting? A. I don't remember.

Q. You remember the date or the incident?

A. I don't remember if there were any witnesses with him.

(Testimony of Lillian Z. Searle.)

Q. Then you do not know whether he was forbidden to introduce such oral testimony?

A. No.

Mr. Tietz: No further questions.

Mr. Foster: No questions.

The Court: All right. Thank you. You may step down.

(Witness excused.)

Mr. Tietz: The defense will call the witness Col. Ferrill.

GEORGE R. FERRILL

called as a witness on behalf of the defendant, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: State your full name for the record.

A. George R. Ferrill. [12]

Direct Examination

Mr. Tietz: Q. Colonel, you are connected with the California Selective Service System?

A. That's correct.

Q. Does your territory include, your jurisdiction, include local board 23? A. It does not.

Q. Would you have any knowledge as to whether or not any advisor has ever been appointed for advisor to registrant as provided in 1604.41 for that Board? A. I would say not.

Q. You mean you are satisfied none was ever appointed?

(Testimony of George R. Ferrill.)

A. As far as I know, none was appointed in the State of California.

Mr. Tietz: Thank you.

Cross Examination

Mr. Foster: Q. Mr. Ferrill—Col. Ferrill—Section 1604.41 provides as follows, does it not, that “Advisors to registrants shall be appointed by the Director of Selective Service upon recommendation of the State Director of Selective Service to advise and assist registrants in the preparation of questionnaires and other Selective Service forms and to advise registrants on other matters relating to their liability under the Selective Service law”—isn’t that the substance of the regulation? [13]

A. That’s correct.

Q. And your experience as a Selective Service official, can you tell us whether in the State of California persons who have been appointed by the Selective Service to advise and assist registrants—persons have been appointed by the Selective Service to advise and assist registrants in the preparation of questionnaires?

A. There were such people appointed during the 1940 Act, yes.

Q. Well now, under the present act are there persons in the Selective Service Board who advise registrants in the preparation of questionnaires?

A. The local board clerks, yes.

Q. And are there persons in the Selective Serv-

(Testimony of George R. Ferrill.)

ice System who advise registrants on other Selective Service forms?

A. The government appeal agent is available to them.

Q. And the clerk of the local board?

A. The clerk of the local board, as well as the board members.

Q. Now, you have an official called the coordinator at the local board? A. That's right.

Q. Are they available for the purpose of assisting in the preparation of Selective Service forms?

A. Well, the coordinator of the local board is one of the compensated staff within the Board. She is the supervisor of the local board group, in addition to the clerks. She is [14] available to answer any question, yes.

Q. Are there any persons who are there for the purpose of advising registrants on other matters relating to their liability under the Selective Service law? A. You mean in the Board?

Q. Well, connected with the Board.

A. The government appeal agent, yes, and the Board members.

Q. What is a government appeal agent?

A. The government appeal agent is an adjunct which was set up for the Board for the purpose of looking out for the interests of the government as well as the interests of the registrant.

Q. What are the qualifications for a government appeal agent?

Mr. Tietz: I will object to the line of questioning,

(Testimony of George R. Ferrill.)

if Your Honor please. It is going far afield, not going to be one of the issues in the case, and, furthermore, the regulations very specifically set all this forth, and the Court can take judicial knowledge of Section 1604.41 as the regulation.

The Court: What's the reason for going into all of this?

Mr. Foster: Well, if Your Honor please, I think that this regulation has been complied with.

The Court: Which regulation?

Mr. Foster: 1604.41.

The Court: Mr. Tietz' statement is that the function of the government appeal agent is set forth in regulation 1604.41.

Mr. Foster: There are some possible facts that I want to set out. I want the facts before the Court as to actually how those persons operate in the State of California. What name they are called by seems to me to be another question.

The Court: I will overrule the objection but this doesn't seem to me to—. If you are asking for their duties under this section, if you are asking what they do otherwise, well, that's another thing.

Mr. Foster: Q. What are their qualifications in the State of California?

A. In the State of California they must be an attorney.

Q. Were there attorneys to advise registrants under the 1940 Act?

A. Yes, they were government appeal agents, if that is what you mean.

(Testimony of George R. Ferrill.)

Q. Government appeal agents? A. Yes.

Q. With the particular title that was called "Advisor to Registrants" during the 1940 Act, were they attorneys? A. No.

Q. They weren't attorneys?

A. It could be that some were but ordinarily they were laymen.

Q. For what purpose were those persons utilized under the 1940 Act?

A. Primarily for the purpose of assisting them in making out [16] their questionnaires.

Q. And was your Selective Service work load greater during the 1940 Act than it is at the present time?

A. Yes, three to four times more.

Q. Have you any idea of how many more Selective Service fulltime employees you had then than you have now?

A. Well, that would be hard to answer, that question, exactly. Of course, our employees were engaged by the amount of work that we had. We had around 45 million registrants under the 1940 Act. We have about 15 million under this Act.

Q. I see.

A. So the personnel in the local boards fluctuated.

Q. Would you say that on the average there is more personnel under the 1940 Act—there was then—within a local board than there is at the present time? A. A great deal more, yes.

(Testimony of George R. Ferrill.)

Q. Do the clerks double up on their duties from time to time on the local board?

A. They do now, yes.

Q. And during World War II you had specialists to do the work?

A. More or less, yes.

Mr. Foster: No further questions.

Redirect Examination

Mr. Tietz: Q. Colonel, you are aware that on January 31, [17] 1955, by executive order 10594 the President amended Section 1604.41 and made the appointment of registrars permissive instead of mandatory?

A. I know that it was clarified by executive order, yes.

Q. Isn't that the substance of it, it was made permissive and not mandatory?

A. It was never taken the position that it was mandatory in the first place.

Q. I see. Since you have been asked about appeal agents, I will ask if that same executive order didn't clarify Section 1604.41 and add the words concerning the duties of the appeal agent, "brought to his attention"?

A. I haven't seen the executive order, Mr. Tietz; I don't know.

Mr. Tietz: That is all.

Mr. Foster: No further questions.

(Witness excused.)

The Court: What is the number of that executive order?

Mr. Tietz: 10594.

The next defense witness will be the defendant himself.

WESLEY LAWRENCE UFFELMAN

the defendant herein, called as a witness in his own behalf, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows: [18]

The Clerk: State your full name for the Court and the record.

A. Wesley Lawrence Uffelman.

Direct Examination

Mr. Tietz: Q. You have had one or more appearances before your local board, have you not?

A. Yes, I have.

Q. At the December 8, 1953 appearance you brought Mr. Hendrickson and Mr. Brese with you, did you not? A. Yes, I did.

Q. Why did you do that?

A. I felt that it would help me, it would help the draft board to understand my activities as a minister.

Q. How long have they been in the work that is done by Jehovah Witnesses?

A. Mr. Hendrickson has been a minister for about 20 years and Mr. Brese about 40 years, and they both hold special positions in the congregations in Sacramento.

The Court: Is that Hendrickson? A. Yes.

(Testimony of Wesley Lawrence Uffelman.)

Mr. Tietz: Q. How long had they known you at that time in December of 1953?

A. Ever since I first learned of this, became part of the religion, and that was in 19— around 1944 somewhere, and I became very familiar with them in the years 1948 and '49, [19] beginning—

Q. Are we to understand that you and they were in Sacramento during all this time? A. Yes.

Q. And that you and they had frequent contact?

A. Yes.

Q. Did you work together?

A. Yes. Mr. Hendrickson is the congregational servant and—

Q. Would you tell us—excuse me—what that means?

A. Well, that the congregational servant is in charge of the congregation and he is in charge of the servant body, which consists of about seven servants.

Q. Proceed, please. A. And—

The Court: Is that now called congregational servant instead of company servant?

A. Yes, sir.

The Court: It formerly was company servant, is that correct? A. Yes.

Mr. Tietz: Q. Now, when you came to this Board meeting with these two gentlemen, did they get to come in and testify for you?

A. No, they weren't allowed to come in. We went into the office and we waited there until the time for the meeting to [20] start, and when I was

(Testimony of Wesley Lawrence Uffelman.)

asked before the Board then I told them I had these two friends out there and asked them if I could invite them in and give testimony, and they said that the time was limited to about 15 minutes, that they could limit the time to that.

Q. Did they actually limit the time to 15 minutes?

Mr. Foster: Well, I object to that as argumentative.

The Court: I will overrule the objection.

Mr. Tietz: Q. How much time did you actually have before the local board at this time?

A. About 15 or 20 minutes.

Q. If you had been given more—. Did you have material with you to present to them, subjects to cover, that would have taken more than that time?

A. Yes. At the very beginning I pointed out that I had information here typed out and that I would like to read it to them and explain it, and they asked me if I would condense it in order to save time.

Q. Then are we to understand that although they accepted your typed-out information, they did not give you the time to discuss it and explain it?

A. That's right, fully.

Q. All right. If you had more time, what would you have done at that meeting by way of a discussion or explanation?

A. Well, I would have explained chiefly my duties as a [21] minister in the congregation and elaborated on the time schedule that I had outlined,

(Testimony of Wesley Lawrence Uffelman.)

explaining in detail the work that was involved and the time that was involved in doing this.

Q. Would you have explained what the publishing means? A. Yes, I would have.

Q. And in a way that you didn't present in any of your written material? A. Yes.

Q. Would you have explained back calls?

A. Yes.

Q. Would you have explained the home studies?

A. Yes.

Q. Would you have explained the other studies that you regularly engage in?

A. Yes, sir, I would.

Q. Now, among other things you presented to the local board at one time a copy of the February 1951 issue of Watchtower. What is Watchtower?

A. The Watchtower is a bible of study aid magazine and which we use in studying the Bible and aiding people to study the Bible. It explains the Scriptures and——

Q. Is it an official publication of your society?

A. Yes, it is.

Q. What is the name of the society?

A. It is the Watchtower Bible and Tract Society.

Q. And where is its principal office?

A. It is in New York.

Q. In Brooklyn, New York?

A. In Brooklyn, New York.

Q. And the Watchtower comes from there, does it not?

(Testimony of Wesley Lawrence Uffelman.)

A. Yes. They have a factory there.

Q. Now, this issue of February 1st, 1951 explained the position of the society on the subject of why Jehovah Witnesses are not pacifists, did it not?

A. Yes.

Q. How did it explain it?

A. Well, it mentioned that Jehovah Witnesses were not pacifists but yet conscientious objectors, impartial in war among nations.

Q. Did it explain why if they were not pacifists that they were still religious objectors to war?

A. Yes, it did.

Q. In what way did it explain it?

Mr. Foster: I am going to object to this, since this defendant was classified 1-O I don't think it makes any difference whether there was any material included in his file or not included in his file concerning that subject. It couldn't conceivably have been prejudicial.

Mr. Tietz: Your Honor please, if I may be permitted to argue the matter now, to save time later. On the subject there [23] are two points that are involved on this factual basis. If the Court would like to hear me now, I would like to proceed.

The Court: Yes.

Mr. Tietz: The first point I want to make is this, it is my contention that since the regulations prohibited an attorney to accompany a registrant at one of these hearings that the Court now is confronted with what I would choose to call a dilemma that the Court may easily resolve, but I look at it

(Testimony of Wesley Lawrence Uffelman.)

this way: here is an individual who as the result of a record made in an administrative proceeding is facing a federal felony charge. Now obviously in this court he is entitled to the benefit of counsel, and he gets it. There wouldn't be any question about that. It can be said that it is consonant with the due process to deny a defendant who was a subject before an administrative body counsel before that administrative body, but if the record that is made there is to be the sole record on which he is to be tried on a criminal case, then in that criminal case today, right now, he should be permitted to go into the matter *de novo*. Now of course there is authority which can be construed completely contrary to this idea, *Cox vs. The United States*, Supreme Court case, 1946. But it seems to me that at one place or other he is entitled to a record that is made with benefit of counsel. He either should have the opportunity before the administrative system to have a lawyer to build the record on which his [24] liberty later depends or today he should be able to go into the whole matter *de novo*. That is my one point on that.

The Court: All right. Let's hear your second one, then.

Mr. Tietz: Now my second point is this. He presented evidence. We have the exhibit which is in evidence which doesn't give all of that—. Has the Court a copy of that?

The Court: I don't have it with me now.

Mr. Tietz: Can I hand the Court—

(Testimony of Wesley Lawrence Uffelman.)

The Court: I have it here.

Mr. Tietz: Now the evidence isn't all there. If the Court will look at page 34, the Court will find that it isn't all there.

Mr. Foster: What?

Mr. Tietz: Look at 34.

The Court: 34 has the face of the Watchtower. I am looking at the page numbers that are circled at the bottom.

Mr. Tietz: Yes, sir. That's it.

The Court: Then it goes on with——

Mr. Tietz: Well, that's my point, Your Honor, and I submit it. If the Government wishes to convict him on that type of record——

The Court: Well, what? The thing I'm trying to find out, what isn't there?

Mr. Tietz: Well, very possibly——

The Court: It says, "This pamphlet consists of pages [25] 67 to 96" written in pencil at the bottom of it.

Mr. Tietz: Well, let me ask the witness a question or two.

Q. You testified that you submitted for consideration by the Selective Service System the Watchtower of February the 1st of 1951, is that correct?

A. Yes.

Q. Did you submit just the front page or did you submit a whole booklet, or what?

A. I submitted the whole Watchtower because——

Mr. Foster: Well, if the Court please, to over-

(Testimony of Wesley Lawrence Uffelman.)

come the problem perhaps I should put the original file back in evidence. What the Court has before it is the photostatic copy which apparently did not copy all the Watchtower, and here is the Watchtower in the original file.

Mr. Tietz: The problem goes further than that. The certificate on the front of the exhibit says that it is a full, true and correct exhibit. Now we have a problem. Now, which is correct? Was this ever sent up to the appeal board when they passed on his ministry? Now I would like to be heard for two or three minutes so you will see the point.

The question is not—my point—the question is not was he a conscientious objector, but the question is this. He claimed at every stage of his processing that he was a minister. He was attempting to show that he was a conscientious objector because he was a minister, not because he was a pacifist, not because he was a philosophic objector, not because of some purely moral code but because of his being a minister. Now, when they admit that he is——

The Court: Let me see if I understand you correctly. Wasn't he claiming also to be a minister of the gospel under that classification?

Mr. Tietz: The last expression of the Court I don't quite understand.

The Court: Wasn't he claiming to be a minister of the gospel so that he would be exempt from military service instead of being classified as a conscientious objector?

(Testimony of Wesley Lawrence Uffelman.)

Mr. Tietz: Yes.

The Court: Then he makes the statement that he also claims to be a conscientious objector because he is a minister.

Mr. Tietz: Correct. That is the sole basis for it.

The Court: That is a different classification than minister of the gospel.

Mr. Tietz: Exactly.

The Court: Is it your position that he was denied anything in that respect?

Mr. Tietz: Oh, yes.

The Court: He was classified as a conscientious objector and given the lowest conscientious objector classification, or highest, whichever way you want to call it. [27]

Mr. Tietz: Lowest.

The Court: Lowest one that could be given. Now, how was he prejudiced?

Mr. Tietz: Because the 4-D minister's classification is lower, and——

The Court: That is not a conscientious objector classification.

Mr. Tietz: No. Let me finish with my two or three minutes of argument and the Court will see my point.

The Selective Service System is required to classify each registrant in the lowest classification for which his evidence fits him, and 4-D is concededly lower than the conscientious objector classification.

The Court: Yes, it is another classification.

Mr. Tietz: Yes.

(Testimony of Wesley Lawrence Uffelman.)

The Court: It is a completely exempt classification.

Mr. Tietz: Yes. Now when his evidence, which this was the chief part, this was the official part showing that the reason for his conscientious objection was solely his ministry, solely his ministry, not pacifism as it is with many other denominations, not his personal code and so on, but it was solely his ministry, and then the Board and the appellate system comes along and concedes that he is telling the truth, concedes that it is right, that he is a conscientious objector, the only legal basis they could have put it on was his [28] ministry. If that is true—see, I am making some fairly big jumps in my reasoning, but I go back and fit them in.

The Court: I follow you so far.

Mr. Tietz: But if that is true, as I argue that, it is implicit in the finding of 1-O in his case and practically every Jehovah Witness case, that it is because of his ministry and nothing else, then they are conceding that he is a bona fide minister.

(Further argument.)

Mr. Foster: Well, if the Court please, apparently there has been some difficulty about this photostatic copy. I might say, and I will prove in rebuttal, that the original copy goes to the appeal board, and at this time I would like to offer to substitute the original back for the photostat, if there is any question about the completeness of the photostatic copy. This Watchtower magazine referred to by counsel is in the original file.

(Testimony of Wesley Lawrence Uffelman.)

The Court: Yes, it is, in full. And the photostatic copy containing the front page also refers to certain pages of the pamphlet, without having them photostated. Now that pamphlet is an issue—probably there were a number of copies published—and whether or not they saw fit to photostat the issue to send along or sent another copy, is another question. But the proposition you are going to make anyway is that the original file was forwarded in toto and that this photostatic copy, while it is substituted—

Mr. Foster: This photostatic copy was made up purely for the convenience of the Court in this trial and for the convenience of the United States Attorney.

The Court: If there is a problem, you may substitute the original and see that it is there so that it will be in the file.

As a matter of fact, what you can do, Mr. Clerk, mark that, the original, and we will just keep this photostatic copy as a photostatic copy of the portion of it, and the original will be in evidence and it will be Exhibit 1—the original will be Exhibit No. 1, and this is just a copy of Exhibit 1.

Mr. Tietz, in any event, I am going to have to—if that's the purpose of this testimony—in other words—

Mr. Tietz: That's half of it.

The Court: Let's hear the other half.

Mr. Tietz: The other half—

The Court: I will have to sustain the objection

(Testimony of Wesley Lawrence Uffelman.)

on this half of it. In other words, I don't think that you are entitled at this stage of the proceeding to go behind the administrative record except to the extent that it would show that this man—would go to something definite that had to do with whether or not he got due process or whether or not he had some right or privilege denied him. I am not here to [30] re-try whether the draft board properly or improperly classified him. My only purpose here is to determine whether or not he was given due process in that classification and whether or not there was a basis in fact for the classification which was so made. Those are the only two things I have before me.

Mr. Tietz: That perhaps takes care of the other half, too, which was my argument that he should be able *de novo* in this court to go into the whole matter.

The Court: I will deny that.

Mr. Foster: If Your Honor please, I would like to make one objection for the record so I can't be caught with having waived it if this matter goes on appeal, and that is I am going to object to the introduction of any evidence in this case other than that concerned with his reporting for induction or reporting to work, on the issue in the indictment, on the grounds that——

The Court: That he failed to exhaust his administrative remedies?

Mr. Foster: Failed to exhaust his administrative remedies.

(Testimony of Wesley Lawrence Uffelman.)

The Court: Well, that objection will be noted for the record. But the objection is sustained, in any event, because I am not going to re-hear all of that matter, Mr. Tietz, and you have made your point now and you can go forward. If there is anything that goes to basis in fact or to procedural due process or due process, I will hear it, but I am not going to hear anything else.

Mr. Tietz: I will not—well, not to argue with the Court, but the basis in fact would be the whole situation.

The Court: That may well be true.

Mr. Tietz: I have only one more point that I could cover with this witness.

Q. You had occasion to visit your local board office many times, I believe? A. Yes, I did.

Q. And when you were there did you have occasion to look at the bulletin board? A. Yes.

Q. Were any things posted on the bulletin board? A. Yes, there were.

Q. What kind of things?

A. Oh, there was one I remember, a piece of paper showing the different classifications.

Q. Of the different registrants, you mean?

A. Yes.

Q. Did you ever see anything which said, "The following are the names and addresses of advisors to registrants", giving you free advice or anything like that? A. No, I never. [32]

Q. If there had been something there, would you have seen it? A. Yes, I believe I would.

(Testimony of Wesley Lawrence Uffelman.)

Cross Examination

Mr. Foster: Q. You remember everything that was on that board from the first time you registered?

The Court: Now, Mr. Foster, I don't think there is any necessity of going into it. You know there is none posted and there is no use in cross examining the witness on that subject. Both the clerk and Col. Ferrill have testified that there weren't any such, and it is immaterial to me whether he saw it or didn't see it because there wasn't anything there.

Mr. Foster: Q. Well now, Mr. Uffelman, are you familiar with where the desk is of the clerk of the local board? A. Yes, I am.

Q. Where is it?

A. Well, on entering it is over to the left about two—

Q. Have you ever gone to that desk and discussed matters with the clerk of the local board?

A. Yes, I did at one time.

Q. At one time? A. Yes.

Q. And where you were sitting right next to the desk—did you sit down next to the desk and discuss the matters that you had with her or did you stand up and talk to her?

A. I sat at the desk and copied things from my file. I wasn't [33] particularly interested—

Q. Did you notice on the desk there the names of the government appeal agent and of the local board members? A. No, I never.

(Testimony of Wesley Lawrence Uffelman.)

Q. Did you look?

A. No, I never looked.

Q. You didn't look, you didn't look over—. Did you notice any papers on her desk that were attached to the desk?

A. Well, that was way back in 1951.

Q. You weren't particularly looking for that?

A. Not at that time, no.

Q. Now, you appealed from your original classification 1-A, didn't you? A. What was that?

Q. When you were first classified 1-A back in—what, 1951?— A. Somewhere in there.

Q. You appealed from that?

A. Yes, I did.

Q. Did anybody advise you to appeal?

A. Well, I knew that I should appeal.

Q. How did you know?

A. Within ten days. It is on the SS form.

Q. It is right on the form that tells you you should appeal? A. Yes.

Q. Did you get a personal appearance at that time? [34]

A. Yes. I asked for a personal appearance.

Q. How did you know that you were entitled to a personal appearance? Did somebody tell you?

A. Yes, I had been told. I have a copy of the Selective Service regulation.

Q. Who was it that told you.

A. Who was it that told me?

Q. Yes.

A. The legal counsel for Jehovah Witnesses.

(Testimony of Wesley Lawrence Uffelman.)

Q. I see. Now, have you consulted with the legal counsel of Jehovah Witnesses from time to time during your classification period?

A. Yes, I have.

Q. On that last classification you received, did you consult with him at that time? A. Yes.

Q. What was that counsel's name?

A. Hagen C. Covington.

Q. And he is from New York City, is that correct? A. Yes.

Q. Now on direct examination you discussed an appearance before the local board. When did that appearance take place?

A. You have reference to the one in December?

Q. You were discussing some matters that you brought two witnesses—— [35]

A. Yes, that was December 8.

Q. What year? A. 1953.

Q. 1953? A. Yes.

Q. You received a personal appearance in March, did you not?

The Court: '54.

Mr. Foster: Q. '54.

A. '54. Well, I received a personal appearance to discuss a particular job.

Q. That was on March 9, 1954?

A. Possibly. Well——

Q. Wasn't it?

A. I think it was on the 8th. And I submitted a memorandum as to what took place the 9th.

Q. That's right. All right. Now, did you bring

(Testimony of Wesley Lawrence Uffelman.)

any witnesses at this time? Perhaps if I showed you your memorandum of what happened there that would refresh your recollection (handing to witness).

A. All right (examining document). I believe I brought Mr. Hendrickson, but he didn't come in.

Q. You didn't ask the Board to examine him at that time? A. No.

Q. And the other time you brought two friends with you? A. Yes. [36]

Q. What did you say to the local board about it?

A. I told them that I had Mr. Hendrickson and Mr. Brese waiting and that I would like to have them come in.

Q. Is that all you said?

A. And that they could verify the things that I had to say were true.

Q. Did you tell the Board they were friends of yours?

A. I told them that they were—that Mr. Brese was a minister in Sacramento for 30 years and that Mr. Hendrickson was the city congregational—in charge of the city congregations.

The Court: What was that name, Brese?

A. Brese.

The Court: B-r-e-s-e.

A. Yes.

Mr. Foster: Q. You have a full time job at the present time, do you? A. Yes.

Q. What is that?

A. I am a hod carrier.

(Testimony of Wesley Lawrence Uffelman.)

Q. Were you a hod carrier during the time that you were classified 1-O this last time?

A. Yes, I was.

Q. Your position in the church at that time was advertising servant, was it not?

A. Yes, and it still is. [37]

Q. You are still what is known as advertising servant?

A. Yes. And I have been appointed also the territory servant in charge of——

Q. I noticed you submitted a sort of a resume of what the organization of your church was, didn't you? You listed the number of servants——

A. Yes.

Q. As I recall, advertising servant was about fourth or fifth on the list.

A. Yes, it's something like that.

Q. You listed them——

A. I just listed them according to——

Q. According to their importance?

A. No, not necessarily.

Q. Well, the congregational servant is the most important member of the congregation, isn't he? Isn't he the leader?

A. He is the leader. There are three, the congregational servant and the assistant and the Bible study servant, they are the three that are more or less in charge.

Q. And you are the advertising servant and you come below them, is that right? If something needs to be done, they tell you what to do? You don't

(Testimony of Wesley Lawrence Uffelman.)

tell them? A. Yes, I discuss it with them.

Q. How big a congregation do you have?

A. At the present time we have about 97 that are—what I [38] mean by that, those that are active in it.

Q. Active in the work?

A. We have many people of good will. They are associated at times.

Q. Now as advertising servant you are in charge of the literature, aren't you?

A. The magazine.

Q. The magazines. And do you assist persons—do you assign persons out to sell the magazines, and so forth, and keep them supplied with magazines?

A. I don't assign them out. I am just in charge of the magazines and they come to me in my name at the congregation, and I see to it that they are able to get the magazines if they so desire.

Q. In other words, you don't tell the people where they are to sell the magazines, you just take care of the magazines themselves?

A. That's right.

Q. Who does tell the people where to sell the magazines?

A. Well, we have certain territory within our congregation's boundaries, and there are many congregations in Sacramento, and we have a certain boundary and I am now in charge of the territories, and I distribute these territories, such as those that want them would come in and ask and we try to regulate them close to their homes and close to

(Testimony of Wesley Lawrence Uffelman.)

our service centers. [39] We have service centers which are located throughout the city in various homes.

Q. Do you deliver the magazines yourself?

A. No. We have the little room in back where they come to.

Q. Oh, they just come and get it. Are you stationed back there most of the time?

A. Yes, I am back there before and after the——

Q. You help them when they come in and bind up the magazines for them?

A. Sort of a post office affair.

Mr. Foster: I see. No further questions.

Redirect Examination

Mr. Tietz: Q. Mr. Foster keeps using the word "selling the magazines". Do you have any comment that will clarify that to us? Are the magazines sold?

A. No, they are not. There is a small contribution asked for the magazines which is merely to cover the cost of printing. However, there is no financial gain involved on the individual's part. They do that voluntarily and they do it solely for the purpose of furthering Bible education, because in the magazine is contained a systematic way of studying the Bible and for the purpose of going house to house and introducing the magazine and asking them to study it and asking a small contribution of five cents for the magazine, and if they can't contribute we always leave them free.

(Testimony of Wesley Lawrence Uffelman.)

Q. Thank you. Now Mr. Foster asked you about the congregation, of which there are 97 active missionaries and ministers——

The Court: Mr. Tietz, we are past recess time. I will take the morning recess and we will go on with the testimony. I don't anticipate it will take much longer.

Mr. Tietz: Three more minutes of this and we are through.

The Court: Well, but you will want to argue the matter. So we will take the recess.

(Short recess taken.)

Mr. Tietz: Q. You were asked by Mr. Foster about your congregation of 97 ministers. Do each of those ministers have any other congregation?

A. Yes.

Q. What is it?

A. It's the homes of the people.

Q. Do they have territories or do they just go wherever they feel like?

A. They have territories that we assign to keep it organized so that it is worked—the whole city is covered systematically.

Q. So they each have two congregations, the one of the congregation of ministers and the one of the congregation of laymen to whom they regularly preach? A. Yes.

Mr. Tietz: That is all. [41]

Mr. Foster: No further questions.

(Witness excused.)

Mr. Tietz: The defense rests.

The Court: Any rebuttal?

Mr. Foster: Yes, Your Honor, one witness.

GEORGE R. FERRILL

called as a witness on behalf of the Government, in rebuttal, having been previously duly sworn, testified further as follows:

Direct Examination

Mr. Foster: Q. Colonel, would you say once again your position in the Selective Service System?

A. I am the personal representative of the state director in this area, commonly known as the coordinator.

Q. Are you familiar with Selective Service appeal procedures? A. Yes, I am.

Q. Can you tell us whether or not the original Selective Service file is sent to the appeal board from an adverse situation in the local board?

A. Yes.

Mr. Tietz: I wish to make an objection in that the usual procedure is not what concerns us but what concerns us in this particular case.

The Court: Overrule the objection. Are you going to produce the person who personally sent it? Is she here? [42]

Mr. Foster: Yes.

The Court: Proceed.

Mr. Foster: Q. Do you know when, in the usual case, the photostatic copy of the record is prepared?

(Testimony of George R. Ferrill.)

A. Well, photostatic copy is prepared before the indictment is returned.

Q. Is it prepared in the usual Selective Service case that does not result in indictment?

A. It is prepared before it is presented to the Grand Jury.

Q. Before the Grand Jury? A. That's right.

Q. But in a case where a matter is merely appealed but there is no criminal action or possibility of criminal action, is a photostatic copy of the file made? A. No.

Mr. Foster: No further questions.

Cross Examination

Mr. Tietz: Q. Has it not come to your attention on some occasion that a registrant will order a photostatic copy of the file long before any criminal action is in view?

A. He might order it from state headquarters. He wouldn't order it from my office.

Mr. Tietz: That is all.

Mr. Foster: No further questions.

(Witness excused.) [43]

LILLIAN Z. SEARLE

called as a witness on behalf of the Government, in rebuttal having been previously duly sworn, testified further as follows:

Direct Examination

Mr. Foster: Q. Mrs. Searle, are you the clerk

(Testimony of Lillian Z. Searle.)

of Local Board 23?

A. Yes, I am.

Q. Can you tell whether or not you transmitted the Selective Service record or file of Wesley Uffelman to the appeal board from the local board?

A. Yes, the complete file.

Q. And did you transmit to the appeal board a photostatic copy or the original record?

A. No.

Q. Was a photostatic copy of that record prepared at that time?

A. Well, I don't know if it was prepared but it always stayed in the local board office until it is presented in court.

Q. Following this defendant's last appeal, was a full photostatic copy prepared of this record that was sent to the appeal board?

A. There are photostatic copies of the whole file.

Q. There are now?

A. Yes.

Q. Were there then? [44]

A. No, I don't think there was a complete copy of the photostats at that time.

Q. There was a photostatic copy of the record that was presented on the prior indictment?

A. Yes.

Q. But there was no photostatic copy of the rest of the material?

A. That's right.

Mr. Foster: No further questions.

Mr. Tietz: I ask that a bundle of photostatic copies of various sizes, most of them being 8½ by 11, some being 8½ by 13 or 14, some being—

(Testimony of Lillian Z. Searle.)

The Court: You don't have to describe them in sizes.

Mr. Tietz: Various sizes—be marked for identification.

The Court: All right, Defense Exhibit A for identification.

(Thereupon group of photostats was marked Defendant's Exhibit A for identification.)

Cross Examination

Mr. Tietz: Q. Mrs. Searle, will you please look over Defense Exhibit A and tell us when that was made, if you know?

A. Well, I believe this was made in 1953 before the registrant was classified 1-O. I'm not sure, but I believe that was it. I believe.

Q. Can you give us any explanation why it is not paginated, [45] why it differs in size?

A. Well, I don't believe this was made by our records depot. I don't know where this came from. But we don't usually. This is the first file I have seen with the cover sheet in this order. Ours usually come like that (indicating).

Q. Do you recall personally making up the file for transmittal to the appeal board on this defendant's second appeal?

The Court: Talking now about the second appeal, now. That's the one that's involved in this case.

A. No. The one that is involved in this case, under the 1-O?

(Testimony of Lillian Z. Searle.)

The Court: Yes.

A. Yes.

Mr. Tietz: Q. Would you like to have before you Government's Exhibit 1 (handing to witness)? During that period, that month or two at that time, did you have other appeals, administrative appeals, where registrants wanted an appeal to the appeal board?

A. Well, more than likely, I don't remember but probably did. I usually have them.

Q. Well, do you have a distinct recollection of getting the papers ready for the appeal board in this Wesley Uffelman case?

A. Yes. I handled all the records of the clerk. I do all the transmitting to the appeal board.

Q. Do you remember that you had other appeals at that time? [46]

A. No, I don't remember.

Q. Well, in this particular case do you remember the documents that you put in the envelope for transmittal to the appeal board? A. Yes.

Q. Well, how can you remember the documents of this case when you don't even recall the names or anything about the other appellate cases you had at the same time, the same month or two?

A. Well, this case has come up so often that I am a little more familiar with this case.

Q. Do you recollect that if all the papers that were sent to the appeal board were found by you in the cover sheets when you got the notice of appeal from this registrant?

(Testimony of Lillian Z. Searle.)

A. Yes, all the records remain in the cover sheet. They are never taken out.

Q. Then what does it mean, "getting the file ready for appeal"?

A. Well, we put the information in order according to date, and everything is in order with the cover sheet on top of the file, inside on top of the information in the file, with the letter of transmittal and a new appeal record.

Q. Do you mean that the file is not in chronological order at all times?

A. Well, it should be at all times, yes. [47]

Q. Well, was this file in chronological order when this defendant said he wanted to take an appeal?

A. Well, it should have been.

Q. I am just asking if it was. Do you recollect it was?

A. Well, the only time it would get out of order would be during a board meeting where perhaps the board members——

Q. That isn't my question. Do you recollect it was in order or it wasn't in order?

A. Well, I don't know.

Q. Do you recollect what you did to the file, if anything, before sending the whole thing off to the appeal board?

A. Yes. I have to go through it and check it and see that everything is in order.

Q. I am asking you what you did, not what you have to do, but what you did.

(Testimony of Lillian Z. Searle.)

A. I do that always so I know I did it on this case.

Q. You know you went through this file?

A. Yes.

Q. Did you change any of the papers in this file from one position to another position--that is, to get them in chronological order or for any other reason of your own? A. No.

Q. You mean you don't recall that you did it or that you didn't check?

A. No, I don't recall. [48]

Q. Do you recall at this moment what was in that file with respect to the documents that your registrant, Wesley Uffelman, gave the Board?

A. No.

Q. You know he gave a lot of little leaflets and such things? A. Yes.

Q. A lot of affidavits? A. Yes.

Q. And you have no independent recollection about any of those things? He gave a magazine, this one we have been talking about this morning. You heard us talk about this in court?

A. Those things all remain inside the file.

Q. Do you recollect at this moment that when you got this file together and sent it on that that magazine was there?

A. Yes, I would swear to it that it was there.

Q. What?

A. I would swear to it that it was there.

(Testimony of Lillian Z. Searle.)

Q. Do you remember that? You remember that but you don't remember about the other things, isn't that right?

A. Well, I know that all the information was there.

Q. Well, how did you know that there was supposed to be a magazine in that file? Does it say some place there in the summary or something that "I gave a magazine" or that "He gave a magazine"? [49]

A. Well, I don't know but I remember I reviewed the files so much that I do know that that particular magazine was there.

Q. You mean that it was there when you sent it up to the appeal board? A. That's right.

Q. Now, do you recall that the little leaflets were there about the meetings that he preached at?

A. Yes, they were all there.

Q. The original ones were all there?

A. Yes.

Q. How many were there?

A. I don't know.

Q. Well, if he gave ten and you found five, would you know that there were five missing?

A. No.

Q. Would you have any way of checking as to whether there were supposed to be ten?

A. No.

Q. Did you have any way of checking that there was supposed to be a magazine? A. No.

(Testimony of Lillian Z. Searle.)

Mr. Tietz: That is all.

Mr. Foster: No further questions.

The Court: That is all, Mrs. Searle, thank you.

(Witness excused.) [50]

The Court: Anything further?

Mr. Foster: No.

Mr. Tietz: I am ready to present my motion.

The Court: Will you make your motions?

Mr. Tietz: I am handing the clerk the original signed copy of the motion and giving Mr. Foster a copy of the motion.

(Thereupon motion for judgment of acquittal was filed with the Court.)

(Thereupon followed argument.)

The Court: I will set April 15, 9:30 a.m., for decision; and if the decision is adverse, we might as well proceed with judgment and sentence at that time and dispose of the whole thing. If it is not, if it is an acquittal, of course we won't have any further proceedings.

That will be the order in the matter.

(Thereupon the matter was continued to April 15, 1955, 9:30 a.m., for decision and further necessary action.)

[Endorsed]: Filed May 26, 1955.

[Endorsed]: No. 14780. United States Court of Appeals for the Ninth Circuit. Wesley Lawrence Uffelman, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: May 27, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14780

WESLEY LAWRENCE UFFELMAN,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S STATEMENT OF POINTS

Appellant will rely upon the following points in the prosecution of his appeal from the judgment entered in the above entitled cause.

I.

Defendant was denied procedural due process in that the local board failed to have available an Advisor to Registrants and to have posted con-

spicuously, or any place, the names and addresses of such advisors, as required by the Regulations, and to the defendant's prejudice.

II.

The draft board lost jurisdiction to order appellant to report for induction because he was denied procedural due process of law in that the Department of Justice illegally deprived him of his right to an investigation, hearing, report and recommendation upon his claim for classification as a conscientious objector, contrary to Section 1626.25 of the Selective Service Regulations and Section 6(j) of the Act.

III.

The undisputed evidence and the draft board's records show that the local board deprived the defendant of his procedural rights to due process, at his personal appearance hearing before said local board, in that the local board abused its discretion by prohibiting defendant the opportunity to use a witness he brought with him, said witness being prepared to testify to material facts not then or thereafter a part of defendant's file.

IV.

The local board upon personal appearance deprived defendant of a full and fair hearing when it limited defendant to fifteen minutes to discuss further his claim for classification as a minister, which was in violation of his rights guaranteed by

the Regulations, the Act, and the Fifth Amendment.

V.

The order of the local board for defendant to perform civilian work at the Los Angeles County Department of Charities and sections 1660.1 and 1660.20 of the Selective Service Regulations are in conflict with the Act, because the work is not national or federal work as required by the Universal Military Training Service Act.

VI.

The Act, as construed and applied by the regulations and the order, calls for a private nonfederal labor draft for the performance of services that are not exceptional or related to the National defense, in violation of the Thirteenth Amendment to the United States Constitution.

VII.

Sections 1660.20 (d) and 1660.30 of Part 1660 of the Regulations are contrary to the First, Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution.

VIII.

There was no evidence that the work to which the Selective Service System assigned the defendant met the requirement of the law.

IX.

The Government has wholly failed to prove a

violation of the Act and Regulations by the defendant as charged in the indictment.

/s/ J. B. TIETZ

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 14, 1955. Paul P. O'Brien,
Clerk.

